86-996

No.

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

McKENZIE COUNTY SOCIAL SERVICES BOARD, S. N. F., THROUGH MICHON SAX AS GUARDIAN AD LITEM, and C. F.,
Petitioners,

vs.

V. G.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH DAKOTA

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I. QUESTION PRESENTED FOR REVIEW

Whether a State agency, which has provided child support and public assistance to enrolled members of an Indian tribe who are residing within the exterior boundaries of an Indian reservation, may maintain an action in State court against the putative father of the Indian child to establish paternity and enforce child support if that putative father is also an enrolled member of an Indian tribe, but is residing outside of the exterior boundaries of the Indian reservation.

II. PARTIES TO THE PROCEEDINGS

The parties to this proceeding are:

1. McKenzie County Social Services Board, Petitioner;

2. S. N. F., a minor child, and an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, through Michon Sax, Guardian Ad Litem, Petitioner;

3. C. F., an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, Petitioner; and

4. V. G., an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, Respondent.

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IV. OPINIONS AND JUDGMENT DELIVERED IN THE COURTS BELOW

The recommendations of paternity and order for support, made by the North Dakota District Court, Northwest Judicial District, McKenzie County, Civil No. 4913, the Honorable Bert L. Wilson presiding, are not reported. The recommendations establishing V. G. as the natural father of S. N. F., and ordering support became final. (Recommendation and Order of the District Court are reprinted in full in the Appendix attached.) V. G. appealed to the North Dakota Supreme Court. That Court reversed the recommendations of the State District Court. *McKenzie County Social Services Board, S. N. F., through Michon Sax as Guardian Ad Litem, and C. F. v. V. G.*, 392 NW2d 399 (N.D. 1986). (The opinion of the North Dakota Supreme Court is reprinted in full in the Appendix attached.)

V. JURISDICTIONAL STATEMENT

A. Proceedings in the State Supreme Court.

The original opinion of the North Dakota Supreme Court was filed by the Clerk of that Court on August 20, 1986. Petitioners, McKenzie County Social Services Board, S. N. F., through her Guardian Ad Litem, and C. F., made a timely petition for rehearing. This petition for rehearing was summarily denied by the North Dakota Supreme Court on September 16, 1986. On September 29, 1986, the opinion and judgment of the North Dakota Supreme Court became final.

B. Statutory Provisions Which Confer Jurisdiction Upon This Court.

28 USC §1257(c), provides the United States Supreme Court may review, by Writ of Certiorari, any final judgment rendered by the highest court of a State when: (1) the validity of any State statute is called into ques-

tion on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or (2) where any right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of the United States.

In the case at bar, the validity of various North Dakota paternity and support statutes are called into question. Respondent, V. G., has argued in the State Courts below, and the North Dakota Supreme Court has agreed, that North Dakota statutes of paternity and support may not be asserted in State court against a putative father if that putative father, and the minor child, are enrolled members of an established Indian tribe. These State paternity and support statutes, it was concluded, would interfere with an Indian tribe's right to make its own rules and be governed by them. Thus, State laws were deemed contrary to federal Indian law and policy.

Further, Petitioner has maintained that due to his status as an enrolled member of an Indian tribe, he has a special immunity and privilege to be free from the strictures of certain State laws of general application, even when he leaves the confines of his tribe's reservation. This special immunity from State laws of general application claimed by Respondent, V. G., must spring from the Constitution, treaties, statutes of the United States, or the decisions of this Court which comprise the total body of federal Indian law.

Rule 17.1(b), Rules of the United States Supreme Court provides further justification to review this case. By that Rule review is proper when state courts decide federal questions in conflicting fashion. The decision of the North Dakota Court in the case at bar is in direct conflict with the decision of the Supreme Court of New Mexico. (Compare, *McKenzie County Social Services Board v. V. G.*,

392 NW2d 399 (N.D. 1986); *State ex rel. Dept. of Human Serv. v. Jojola*, 99 NM 500, 660 P2d 590 (1983), Cert. Den. 464 US 803.)

Respondent, V. G., raised the issue of State court exercise of subject matter jurisdiction in cases involving Indian litigants but arising off of the Indian reservations, a question of federal law, at all stages in the proceedings before the State courts in North Dakota. This question was decided by the North Dakota Supreme Court solely upon its interpretation of federal Indian law. No question of State law was presented, or relied upon by the North Dakota Supreme Court.

VI. CONSTITUTIONAL PROVISIONS AND STATUTES

The following statutory provisions are reprinted in full in the Statutory Appendix attached:

1. 28 USC §1257;
2. 42 USC §602(a)(26) (Section 402(a)(26), Title IV, Part A, Aid to Families With Dependent Children, Federal Social Security Act);
3. 42 USC §§651 through 663 (Sections 451 through 463, Title IV, Part D, Child Support and Establishment of Paternity, Federal Social Security Act); and
4. Chapter 50-09, NDCC, Aid to Dependent Children.

VII. STATEMENT OF THE CASE

On November 25, 1970, S. N. F. was born out of wedlock to C. F. (Throughout the proceedings in the State Supreme Court the initials of all individual parties were used. This practice will be followed in the petition.) S. N. F., and C. F. are enrolled members of the Three

Affiliated Tribes of the Fort Berthold Indian Reservation, and reside within the exterior boundaries of that reservation at Mandaree, North Dakota. (Opinion of the North Dakota Supreme Court, Appendix, page A19.)

C. F. applied for, and received from McKenzie County Social Services Board public assistance in the form of aid for families with dependent children. Assistance was received between 1977 and 1984. (Opinion of the North Dakota Supreme Court, Appendix, page A19.)

On February 1, 1983, C. F. assigned all rights to support to the McKenzie County Social Services Board. This assignment was made pursuant to Section 402(a)(26) of Title IV of the Federal Social Security Act (42 USC §602(a)(26)), and Section 50-09-06, NDCC.

The McKenzie County Social Services Board, C. F., and S. N. F., through her Guardian Ad Litem, petitioned the State District Court to establish V. G. as the natural father of S. N. F. The petition also sought child support in the sum of $200.00 per month, as well as $10,362.11 for past support and assistance provided by the County. (Opinion of the North Dakota Supreme Court, Appendix, page A19.)

V. G. is also an enrolled member of the Three Affiliated Tribes. However, prior to the petition, and at all times relevant to the petition, V. G. resided off the Fort Berthold Indian Reservation. (Sheriff's Returns of Service, Appendix, pages A9 and A14), and Petition for Determination, Appendix, page A4.)

V. G. moved to dismiss the State court action, asserting the State courts had no subject matter jurisdiction to hear the case, and further denying that he was the father of S. N. F. V. G. failed to attend a scheduled pretrial proceeding held in accordance with State law. At that hearing, the State District Court heard testimony

concerning paternity and the need for support. That Court concluded V. G. was the father, and made recommendations accordingly. Thirty days thereafter, those recommendations became final. (Opinion of the North Dakota Supreme Court, Appendix, pages A20 and A21.)

V. G. moved to vacate the recommendations in the State District Court. The motion was denied by that Court and V. G. appealed to the North Dakota Supreme Court. V. G. contended federal Indian law and policy prohibited State court exercise of subject matter jurisdiction to determine paternity in this case because the action involved relationships between Indians, and involved a claim arising on an Indian reservation. The North Dakota Supreme Court agreed. It reversed the State District Court's recommendations and final order, and gave directions to dismiss the petition and action. (Opinion of the North Dakota Supreme Court, Appendix. page A26.)

Petitioners have made petition to this Court for review by Writ of Certiorari.

VIII. SUMMARY OF THE ARGUMENT

The North Dakota Supreme Court has allowed an enrolled member of an Indian tribe, living off the Indian reservation, to use his tribal status to avoid legal responsibilities all other citizens of the State share in common. The North Dakota Supreme Court ruling has allowed an enrolled Indian who has left the Indian reservation to nonetheless assert his tribal status as a bar to State court subject matter jurisdiction to an action brought by a State welfare agency, in State Court, seeking the determination of paternity of a minor child. and enforcing support obligations for that child. The child is also an enrolled Indian.

but resides on the Indian reservation. By allowing this to occur, the North Dakota Supreme Court has seriously misread federal Indian law. It has futher allowed an enrolled Indian to create for himself a special privilege and protection from State laws and proceedings where none had previously existed.

While the history, and particularly the North Dakota history, of State court jurisdictional power in Indian country is far from consistent and clear, at least two rules seem generally well established. The first rule is that a State court has no subject matter jurisdiction over on reservation activities which involve Indian litigants if that exercise would infringe upon a tribe's right to make its own rules and be governed by them. The second rule is that for all activities occurring off of the Indian reservation, the Indian tribe, as well as all individual Indians, are subject to the same State laws of general application that all other citizens are subject to. The North Dakota Supreme Court has applied the jurisdictional prohibition found in the first rule to the factual setting necessary for the second. That is, the North Dakota Supreme Court has held that even for individual Indians found off the reservation, State laws of general application will not apply if they might interfere with an Indian tribe's sovereign powers.

This State-created jurisdictional rule is not justified by existing federal Indian law or policy, is inconsistent with the rules applied by other states in similar situations, and allows for the creation of a special privilege not justified by law.

The North Dakota opinion and judgment seriously misreads federal Indian law. This Court ought grant review by Writ of Certiorari to correct this misreading.

IX. ARGUMENT

A. THE NORTH DAKOTA SUPREME COURT DECISION IN McKENZIE COUNTY SOCIAL SERVICES, ET AL. v. V. G., CREATES A NEW JURISDICTIONAL RULE NOT PREVIOUSLY ESTABLISHED BY CONGRESS OR THIS COURT IN FEDERAL INDIAN LAW.

Respondent, V. G., was named by C. F. to be the natural father of S. N. F. Based upon this allegation, McKenzie County, which had provided aid for families with dependent children, (AFDC) to C. F. and S. N. F., brought an action in State District Court to establish V. G.'s paternity of S. N. F.; to enforce continued support; and to recover prior support payments from the County to S. N. F. (See, Section 50-09-06, NDCC, and 42 USC §602(a)(26).) Because of the North Dakota Supreme Court's serious misreading of the current status of federal Indian law and policy, it allowed V. G. to successfully avoid appearing in State court and defending against this action. The North Dakota Supreme Court recognized a bar to the State court's exercise of subject matter jurisdiction finding that even though V. G. may have been off the reservation for significant periods while McKenzie County provided aid to S. N. F. and C. F., since mother, father, and child were enrolled members of the Three Affiliated Tribes of the Fort Berthold Indian Reservation, a determination of the paternity of S. N. F. for purposes of support would interfere with the tribe's power to govern itself. *McKenzie County Social Services Board, et al. v. V. G.*, 392 NW2d 399 (N.D. 1986).

This ruling seriously misreads current federal Indian law and policy. It establishes for tribal Indians who have

left the Indian reservation a special privilege and immunity not previously recognized or justified. The State Court decision ought be reviewed by this Court.

1. A State Court May Not Exercise Its Subject Matter Jurisdiction In Indian County If To Do So It Would Infringe Upon A Tribe's Sovereign Power.

The Indian tribes have long been recognized as domestic dependent sovereign nations. *Cherokee Nation v. Georgia*, 30 US (5 Peters) 1 (1831). As such, for so long as they retain their tribal identity, and remain on their reservations, the Indian tribes and the Indian people have the sovereign power to make their own rules and be governed by them, *Williams v. Lee*, 358 US 217 (1959); subject only to the plenary authority of Congress. *United States v. Kagama*, 118 US 375 (1886).

This semi-sovereign status of the Indian people has meant that State courts may exercise only a very limited subject matter jurisdiction over activities on the Indian reservation and which involve the Indian people. The exact perimeter of the State court's power to reach into Indian country and affairs has not been clearly defined, and, at least insofar as North Dakota is concerned, the history and course of State court subject matter jurisdiction in Indian country is best characterized as "somewhat erratic." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 US 138 at 142 (1984).

Even though erratic, one clear rule (which the North Dakota Supreme Court relied upon erroneously in this case) is that State courts have no subject matter jurisdiction over activities arising in Indian country, and involv-

ing Indian litigants if the exercise of such jurisdiction would infringe upon a tribe's right to make its own rules and be governed by them. *McKenzie County Social Services Board, et al. v. V. G.*, 392 NW2d 399 at 402 (1986), quoting *Williams v. Lee*, 358 US at 223.

The North Dakota Supreme Court applied this federal Indian law rule erroneously in this case for two reasons. First, the rule by its nature is applicable only to those activities which involve an Indian or Indian tribe as a defendant, and which arise on an Indian reservation. While the North Dakota Court noted that V. G., an enrolled Indian, lived off the reservation at substantial times, it did not inquire, and did not allow the State District Court to determine V. G.'s location or residence at the time of the commencement of the paternity and enforcement action. *McKenzie County,* 392 NW2d 399 at 402. Had V. G. been off the reservation at the time the action was commenced, he would generally be subject to all State laws of general application. *Mescalero Apache Tribe v. Jones*, 411 US 145 (1973).

Thus, it is unclear whether the factual setting of this case is at odds with the factual setting necessary to apply the *Williams v. Lee* rule. From the record presented to the Supreme Court of North Dakota below, it is clear that V. G. was served with process and notices in this action while off the Fort Berthold Indian Reservation. (Sheriff's Returns of Service, Appendix pages A9 and A14.) Furthermore, the Court was asked to take judicial notice of the fact that V. G. is an attorney licensed to practice in the State of North Dakota, and has maintained at various times an office in the City of Bismarck, North Dakota, a city which is located off of the Fort Berthold Indian Reservation, and not in Indian country.

By not even allowing or requiring an inquiry as to V. G.'s whereabouts when the action was started, even though the question was raised and this fact was essential to the application of the *Williams v. Lee* rule, the North Dakota Court has misread federal Indian law. If not corrected, enrolled tribal members and the Indian tribes may engage in off reservation activities in North Dakota and if a State court exercise of jurisdiction over those activities would infringe on tribal powers, the State court would have to refrain from acting. This sort of State deference to tribal authority has never been recognized or sanctioned by this Court.

V. G.'s location at the time of the commencement of this proceeding is essential to a determination of whether the *Williams v. Lee* rule should apply. If he was in fact off of the Indian reservation at the time the action was commenced, the *Williams v. Lee* rule is inapplicable, and the North Dakota Supreme Court has erred in applying the *Williams v. Lee* rule to this case.

Second, the exercise of State court subject matter jurisdiction in this case is forbidden only if it would infringe upon the tribe's ability to make its own rules and be governed by them. V. G. has asserted, and the North Dakota Court agreed that a determination of parentage of a child of tribal members is a matter intimately connected with tribal sovereign powers. *McKenzie County Social Services Board, et al.*, 392 NW2d at 402. McKenzie County recognizes that Indian tribes must have the power to determine the enrollment status of members. A power to determine tribal status is a fundamental power which must rest exclusively with the Indian tribe, subject only to congressional control. *Martinez v. Southern Ute Tribe of the Southern Ute Reservation*, 249 F2d 915 (10th Cir. 1957), Cert. Den. 396 US 1003.

The parentage of an Indian child is a matter which may be intimately connected with the tribe's power to determine tribal membership and control its internal affairs. A State court action which might interfere with the determination of parentage is arguably improper if that determination would control or tend to control a decision regarding membership or enrollment status. This danger, however, was not faced by the North Dakota courts in the case at bar. S. N. F.'s tribal status had already been determined. She was already an enrolled member of the Three Affiliated Tribes. *McKenzie County Social Services Board, et al.*, 392 NW2d at 400. The North Dakota trial court was required to determine paternity for purposes of enforcement and support obligations only. Its determination would not, for any reason, interfere with a tribal function. Furthermore since there currently exists in North Dakota no full faith and credit provision which would bind the State and tribal courts to reciprocally honor decisions. nor are there any established rules of comity between the North Dakota courts and the tribal courts, it is hard to see how this off-reservation determination of paternity for purposes of enforcement of support only could possibly bind or affect in any manner a tribal proceeding concerning S. N. F.'s enrollment status. *Lohnes v. Cloud*, 254 NW2d 430 (N.D. 1970); and *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 US at ....., 90 LEd2d at ..... (1986). A State court decision in this matter would in no fashion interfere with the tribe's ability to make rules and be governed by them.

The North Dakota court has applied the prohibition stated by federal Indian law in *Williams v. Lee*, to a situation factually inappropriate and functionally irrelevant. The decision allows V. G. to escape a State proceeding required to establish parental support obligations, even

though V. G. may have been off the reservation. The North Dakota decision creates for V. G. a special status and privilege when off the reservation which has not been previously recognized or enunciated by federal Indian law and policy. Before such a rule is allowed to take force, it ought be reviewed by this Court.

2. When Off Of The Indian Reservation, Enrolled Members Of An Indian Tribe Are Subject To The Same State Laws Of General Application As Are All Other Citizens Of The State.

Again, while the exercise subject matter jurisdiction of State courts over the Indian people follows a "somewhat erratic" course, especially in North Dakota, a second rule seems equally well established by the decisions of this Court. That is:

> But tribal activities conducted outside the reservation present different considerations. "State authority over Indians is yet more extensive over activities . . . not on any reservation." *Organized Village of Kake*, supra, at 75, 7 L Ed 2d 573. Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State. See, e.g., *Puyallup Tribe v. Department of Game*, 391 US 392, 398, 20 L Ed 2d 689, 88 S Ct 1725 (1968); *Organized Village of Kake*, supra, at 75-76, 7 L Ed 2d 573; *Tulee v. Washington*, 315 US 681, 683, 86 L Ed 1115, 62 S Ct 862 (1942); *Shaw v. Gibson-Zahniser Oil Corp.*, 276 US 575, 72 L Ed 709, 48 S Ct 333 (1928); *Ward v. Race Horse*, 163 US 504, 41 L Ed 244, 16 S Ct 1076 (1896).
>
> *Mescalero Apache Tribe v. Jones*, 411 US 145 at 148 and 149 (1973).

V. G., an enrolled Indian, has gone beyond the reservation's boundaries. *McKenzie County Social Services Board, et al.*, 392 NW2d at 402. There is no federal law which would exempt him, as a tribal member, from his duties to abide by all State laws when off the reservation. This includes his obligation to respond to State court proceedings, even if they are paternity and enforcement proceedings. When off the reservation, his duty to meet his parental obligations to his children, if paternity is established, are controlled by State law. His duty, like the duty of all other citizens is to meet his parental obligations to his children once those obligations are established. Furthermore, it would appear the State law, Chapter 50-09, NDCC, which is the enforcement mechanism required by 42 USC §§651 through 663 (Sections 451 through 463. Title IV, Part D, Child Support and Establishment of Paternity, Federal Social Security Act) reveals a congressional as well as a State policy of enforcement of parental obligations against everyone, including Indians when not on their Indian reservation. Federal law mandates that the State agency which administers aid to families with dependent children (AFDC) bring an action against the putative father of the child receiving public assistance. 42 USC §§651 through 663. No exceptions to this rule for Indian parents are made.

Congress has made money available to the States to supply aid to families with children in need, and has mandated that the States do everything possible to recoup this money from the noncustodial parents of those children. This federal law contemplates the necessity of a State court action in the first instance to ascertain paternity. The State law is nondiscriminatory, it is required by Congress, and it is applicable to all citizens of the State. It should therefore be applicable to V. G. when he leaves

the reservation, notwithstanding his tribal membership, if his children are receiving public assistance.

The North Dakota decision completely ignores the federal Indian law as stated in *Mescalero Apache Tribe v. Jones*. By ignoring this federal law, the State decision allows V. G. to use his Indian status to avoid the responsibilities all citizens share alike. This special status and privilege for the Indian people when off the reservation has never been recognized by federal Indian law before. This Court ought review the North Dakota decision to determine the propriety of such a new rule. Writ of Certiorari ought be granted.

B. THE DECISION OF THE NORTH DAKOTA SUPREME COURT IS NOT JUSTIFIED BY EXISTING FEDERAL INDIAN LAW AND POLICY, AND SHOULD NOT BE ALLOWED TO STAND.

That Indians have special privileges and status relative to State laws when on the reservation cannot be questioned. Federal Indian law has developed over the years by treaty, statute, and the decisions of this Court. *Oliphant v. Suquomish Indian Tribe*, 435 US 191 at 206 (1978). That same body of law does not create or guarantee the same privileges and status when activities are engaged in off the reservation by Indians. *Mescalero Apache Tribe v. Jones*, 411 US 145 (1973). The decision of the North Dakota Supreme Court, in the case at bar, bestows special privileges and protections not recognized or justified by federal Indian law. The North Dakota Supreme Court has misread federal Indian law, and created a special status and privilege. 28 USC §1257(c) would provide, therefore, that in this case where a State court has misapplied federal law and a State decision has created a special status

or privilege not recognized and required by the federal law, that review of the State court decision by Writ of Certiorari is appropriate.

Rule 17.1(b) United States Supreme Court Rules, likewise provides significant guidance to compel the review of this case. That rule provides that where a State court decision involving a federal question is at odds with a decision on the same federal question rendered by another State court, review is proper. The New Mexico Supreme Court has addressed the precise question presented in the *McKenzie County Social Services Board* case. Using the same body of federal Indian law, the same federal Social Security law, and a similar State paternity and enforcement law, the New Mexico Supreme Court has decided the identical question presented in the case at bar, but decided the question directly opposite to the North Dakota decision. See, *State ex rel. Dept. of Human Serv. v. Jojola*, 99 NM 500, 660 P2d 590 (1983), Cert. Den. 464 US 803.

Factually, the New Mexico case, and the North Dakota case are identical. In both cases, mother and child were enrolled members of an Indian tribe, and resided on the reservation. Mother applied for, and received public assistance for the benefit of the child. As required by State and federal laws, the natural mother named a natural father, who was also an enrolled member of the Indian tribe but was residing off the reservation. Pursuant to State and Federal Social Security law, the State agency filed actions to establish paternity, and compel support. The natural father made motions to dismiss for lack of subject matter jurisdiction. See, generally, *State ex rel. Dept. of Human Serv.*, 99 NM ....., 660 P2d at 591, and *McKenzie County Social Services Board*, 392 NW2d at 400.

The outcome of the two cases was entirely different, even though the North Dakota Supreme Court and the New Mexico Supreme Court applied the same general federal Indian laws, and similar State paternity and support laws. The New Mexico Court ruled that Indians leaving the Indian reservation were subject to all State laws of general application, thereby correctly applying the *Mescalero Apache Tribe v. Jones* rule. That rule was totally ignored by the North Dakota Supreme Court in the *McKenzie County Social Services Board* case.

Next, the New Mexico Court rejected the natural father's arguments pursuant to *Williams v. Lee*, that a State court paternity action would infringe upon his tribe's sovereign powers. The New Mexico Court first looked for governing acts of Congress, and found none applicable. Second, the Court found no interference arising from a State court paternity and support proceeding with the tribe's power to make its own rules and be governed by them. The New Mexico Court ruled:

> Jojola asserts that the interest to be protected is the tribe's right to regulate the domestic affairs of the tribe. However, DHS asserts that the interest to be protected is the State's public assistance program. DHS must abide by state and federal regulations in their assistance program. The federal government has set forth certain requirements in assistance programs, such as the collection of assistance from the non-custodial parent. Therefore, the interest to be protected is the uniform enforcement of paternity determination and child support obligations within this State.
>
> In New Mexico, there are twenty-three separate Indian jurisdictions which may have different statutes

> and rules. To require the State of New Mexico to proceed to the various tribal courts of the State would defeat and be a burden on the aims of the public assistance program. Therefore, we find no interference with tribal self-government as long as DHS does not assert jurisdiction within the reservation.
>
> *State ex rel. Dept of Human Serv. v. Jojola*, 99 NM at ....., 660 P2d at 593.

The New Mexico Court found an overriding State interest in the uniform enforcement of paternity and support actions within the State, and in accordance with mandated federal statutory guidelines. In conclusion, the New Mexico Court ruled paternity and support actions would not interfere with tribal self government for so long as the State did not assert subject matter jurisdiction within the reservation. 99 NM ....., 660 P2d 593. This is a correct application of the *Williams v. Lee* rule, and federal Indian law, but is entirely contrary to the ruling made by the North Dakota Supreme Court in the case at bar.

The North Dakota Supreme Court's decision in this case is in conflict with established rules of federal Indian law and policy. It is contrary to the conclusions reached by other State courts on the same issues. It creates an unreasonable and unjustified privilege and status for Indians to be free from the controls of State law when they leave their reservations.

Review of the North Dakota Supreme Court decision is therefore entirely proper. Petitioners urge this Court to grant review of the North Dakota decision by Writ of Certiorari to correct the State Court's improper interpretation and application of federal Indian law.

X. CONCLUSION

For the reasons stated, Writ of Certiorari to the Supreme Court of North Dakota ought be granted in this case.

Respectfully submitted this 15th day of December, 1986.

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Form 321-E (Rev 3/79) 4 1983

ACKNOWLEDGEMENT OF ASSIGNMENT OF RIGHTS TO SUPPORT

I, Cheryle J. Fox (Cheryle J. Fox), am applying for Aid to Families with Dependent Children or Aid to Families with Dependent Children-Foster Care for the following child(ren): *(Print full name of child)*

Stephanie N. Fox (Stephanie N. Fox)

I acknowledge that, under North Dakota Law, this application means that I have assigned all support rights (accrued, pending and continuing) for all persons named above to the Social Service Board of North Dakota and the McKenzie (McKenzie) County Social Service Board including my own support rights; the support rights of any other person included in the assistance grant; and, the support rights of the child(ren) named above. The person who is responsible for the support of the child(ren) is.

Vance Gillette [redacted] (Name and Address)

Vance Gillette — Address Unknown

This assignment shall become effective as to both current and past unpaid child support upon a determination that I and/or my child(ren) is/are eligible for assistance. The assignment shall terminate with respect to current support rights upon termination of eligibility for cash assistance, and with respect to support rights attributable to periods during which cash assistance was granted upon the repayment of past public assistance and care, except with respect to the amount of any unpaid support obligation that has accrued under this assignment. I further agree to cooperate to the best of my ability with the Child Support Enforcement Unit in efforts to secure and collect said child support and to cooperate in establishing paternity under the terms set forth above.

This assignment is subject to the terms and conditions of Section 402(a) (26) of Title IV of the Federal Social Security Act and the applicable federal regulations, and Section 50-09-06 of the North Dakota Century Code.

I have ☒ *have not* ☐ *received AFDC or AFDC Foster Care in the past. If you have received AFDC or AFDC-Foster Care in the past, please indicate the state and county from which it was received.*

North Dakota (State) — Mountrail (County)

Date last check was received 1975 (1975) — *Previous case number if known* _____

Under what name(s) was AFDC or AFDC-Foster Care received previously? Cheryle J. Fox (Cheryle J. Fox)

Feb 1, 1983 (Date) — Cheryle J. Fox (Signature of Applicant/Recipient)

2-1-83 (Date) — Cheryle J. Fox

Case No. 27-03242-32

To be completed by County Social Service Board

The Assignment of Rights to Support is effective February (Month) 1983 (Year)

Has the collected child support for the month the application was approved been used to determine the amount of the initial grant? Yes ☐ No ☒ If yes, $_____ (Amount) considered for _____ (Month) _____ (Year)

Above recipient's address: Box 554
Mandaree, N. D. 58757

Recipient's phone number: None

Clerk of Court to which referral is mailed: None - Paternity not established (County and State)

DISTRIBUTION:
Original Regional IV-D Unit
Blue Clerk of District Court
Green Obligor
Canary County Social Service Board
Pink Applicant/Recipient
Goldenrod State IV-D Unit

A1

STATE OF NORTH DAKOTA
COUNTY OF McKENZIE

IN DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

IN THE INTEREST OF STEPHANIE NICOLE FOX
(DOB: November 25, 1970)

McKenzie County Social Services Board, Stephanie Nicole Fox, through Michon Sax as Guardian Ad Litem, and Cheryle Fox,	)	
Petitioners,	)	Civil No. .....
vs.	)	
Vance Gillette,	)	
Respondent.	)	

PETITION FOR DETERMINATION OF PATERNITY AND TO PROVIDE SUPPORT AND REIMBURSEMENT OF SUPPORT

COME NOW THE PETITIONERS, and for a cause of action allege as follows:

I.

Petitioner, McKenzie County Social Service Board, is a public welfare board organized under the laws of the State of North Dakota; Petitioner, Michon Sax, Director of McKenzie County Social Service Board, Watford City, North Dakota, has been appointed Guardian Ad Litem by the Court on behalf of Stephanie Nicole Fox, and Petitioner, Cheryle Fox, said child's mother, resides at P.O. Box 554, in the City of Mandaree, County of McKenzie, State of North Dakota.

II.

Respondent, Vance Gillette, resides at P. O. Box 2379, in the City of Bismarck, County of Burleigh, State of North Dakota.

III.

Petitioner, Cheryle Fox, and Respondent, Vance Gillette, have never been married to each other.

IV.

Petitioner, Cheryle Fox, is the mother and Respondent, Vance Gillette, is the father of Stephanie Nicole Fox, born November 25, 1970. Said minor child is residing with and is in the legal custody of Petitioner, Cheryle Fox, at her address as shown above.

V.

Petitioner, Cheryle Fox, was not able to provide sufficient support for the said child and was forced to apply for and receives support payments from the McKenzie County Social Services Board.

VI.

Petitioner, Cheryle Fox, said mother of said child, assigned to the County of McKenzie and the Social Service Board of North Dakota all rights to support from any other person she may have on her own behalf or on the behalf of the minor child named herein pursuant to Section 402 (a) (26) of Title IV of the Federal Social Security Act, as amended, and Section 50-09-06 of the North Dakota Century Code.

VII.

Between March 1977 and September 1984, Petitioner, McKenzie County Social Service Board, has provided in excess of Ten Thousand Three Hundred Sixty-Two and eleven/hundredths Dollars ($10,362.11) for the care and support of the said minor child; said care and support is of a continuing nature and for that reason Petitioners request leave to amend this Petition at the time of trial to include all such expenditures and medical expenditures to the date of Court Order.

VIII.

That pursuant to § 14-08.1 and § 14-17-14 of the North Dakota Century Code, as amended, Respondent, Vance Gillette, has a duty to reimburse the McKenzie County Social Service Board for the total amount of care and support that was distributed to Stephanie Nicole Fox on behalf of Respondent, Vance Gillette.

IX.

That the sum of Two Hundred and no/hundredths Dollars ($200.00) per month is a reasonable and necessary amount needed to provide Stephanie Nicole Fox with necessary care and support; that it is further reasonable and necessary that Respondent, Vance Gillette, maintain medical insurance on the said minor child or be otherwise responsible for the said child's medical debts.

X.

That it is further reasonable that the Respondent, Vance Gillette, pay the sum of One Hundred and no/hundredths Dollars ($100.00) per month, to Petitioner, McKenzie County Social Service Board, toward past care

and support expenditures by that agency for the minor child.

WHEREFORE, Petitioners pray for a finding by the Honorable Court as follows:

1. That Vance Gillette be adjudged to be the natural father of Stephanie Nicole Fox.

2. That Petitioner, Cheryle Fox, continue to have custody of the said minor child.

3. That the Respondent, Vance Gillette, be ordered to pay, through the Clerk of District Court of McKenzie County, North Dakota, the sum of Two Hundred and no/hundredths Dollars ($200.00) per month for the continuing support of the minor child, until said child reaches the age of eighteen (18) years or earlier ceases to be dependent upon the Petitioner, Cheryle Fox, and that the Respondent be further ordered to maintain medical, dental, and optometric expenses which are not covered by insurance.

4. That the Petitioner, McKenzie County Social Service Board, have judgment against the Respondent, Vance Gillette, in the amount of Ten Thousand Three Hundred Sixty-Two and eleven/hundredths Dollars ($10,362.11), which may be paid at the rate of One Hundred and no/hundredths Dollars ($100.00) per month through the Clerk of District Court of McKenzie County. Said amount represents the past care and support disbursed by that agency on behalf of the said minor child and which may be amended at the time of hearing to include disbursements to date of Court Order.

5. That the State Registrar of Vital Statistics prepare an amended birth registration consistent with the findings of the Court.

6. That Petitioners be awarded their costs and disbursements of suit and whatever other relief the Court shall deem just and fair.

Dated at Williston, North Dakota this 15th day of January, 1985.

Anseth & Zander
/s/ Janet Holter Zander
Janet Holter Zander
A Member of the Firm
One of the Attorneys for Petitioners
Office and Postoffice Address
Townsite Building
417 1st Avenue East
P. O. Box 2536
Williston, ND 58801

STATE OF NORTH DAKOTA
COUNTY OF WILLIAMS

IN DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

Williams County Social Service Board, Stephanie Nichole Fox, through Michon Sax as Guardian Ad litem, and Cheryle Fox,	)	
Petitioners,	)	Civil No. .....
-vs-	)	
Vance Gillette,	)	
Respondent.	)	

NOTICE OF HEARING

PLEASE TAKE NOTICE That the above-entitled matter will be heard before the Honorable Bert L. Wilson, District Judge, in the Chambers of said Court in the Courthouse in said City of Williston, County of Williams, State of North Dakota, on the 30th day of September, 1985, at 11:00 o'clock A.M., or as soon thereafter as counsel can be heard.

Dated at Williston, North Dakota this 19th day of August, 1985.

Anseth & Zander
/s/ Janet Holter Zander
Janet Holter Zander
One of the Attorneys for Petitioners
Office and Postoffice Address
417 First Avenue East
P.O. Box 2536
Williston, North Dakota 58801

STATE OF MONTANA)
) ss.
County of Glacier)

OFFICE OF THE SHERIFF

I HEREBY CERTIFY, That I received the within Notice of Hearing on the 21st day of August 1985.

That I served the within Notice of Hearing on the 22nd day of August, 1985 by delivering a copy of said Notice of Hearing to Vance Gillette personally in the said County of Glacier.

Jim Persling
Sheriff
by /s/ Lloyd Birengay
Deputy

Service: $5.00
Mileage: $5.00

STATE OF NORTH DAKOTA
COUNTY OF McKENZIE

IN DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

McKenzie County Social Service Board, Stephanie Nicole Fox, through Michon Sax as Guardian Ad Litem, and Cheryle Fox, Petitioners,	)	Civil No. 4913
vs.	)	
Vance Gillette, Respondent.	)	

ORDER

The above-entitled matter came on for hearing on the 30th day of September, 1985, regarding Stephanie Nicole Fox, said hearing being heard in the Chambers of the Court, in the courthouse in the City of Williston, County of Williams, State of North Dakota, before the Honorable Bert L. Wilson, District Judge, pursuant to a Petition for Determination of Paternity and to Provide Support and Reimbursement of Support; and the Petitioners being represented by their attorney, Janet Holter Zander, and the Respondent not appearing, and it appearing to the court that said Summons, Petition and the Notice of Hearing have been duly and regularly served upon the Respondent in accordance with the laws of the State of North Dakota, and the Petitioners having introduced testimony in support of, and to substantiate their cause of action, and the Court having heard the

testimony and being fully advised in the matter, and having considered the same, now makes the following recommendations pursuant to Section 14-17-12(2) of the North Dakota Century Code which shall become final and shall Order that Judgment be entered accordingly unless the Respondent shows good cause within thirty (30) days of the service of this Order:

FINDINGS OF FACT

1. That Stephanie Nicole Fox, a female child, was born on November 25, 1970. Said minor child is residing with and is in the legal custody of Petitioner, Cheryle Fox.

2. That the Respondent, Vance Gillette, during times herein mentioned, had sufficient contacts with the State of North Dakota, giving Williams County District Court jurisdiction of this matter.

3. That the Respondent, Vance Gillette, and the Petitioner, Cheryle Fox, said child's mother, have never been married to each other.

4. That the Petitioner, Cheryle Fox, was not able to provide sufficient support for the said child and was forced to apply for and receives support payments from the McKenzie County Social Services Board.

5. That the Petitioner, Cheryle Fox, has received assistance from the McKenzie County Social Service Board in the amount of Ten Thousand Three Hundred Sixty-Two and eleven/hundredths Dollars ($10,362.11), and that the sum of One Hundred and no/hundredths Dollars ($100.00) per month, commencing October, 1985, is reasonable for Respondent to pay to McKenzie County Social Service Board toward past care and support expenditures.

6. That the Respondent, Vance Gillette, is an able-bodied man, and should be capable of providing the sum of Two Hundred and no/hundredths Dollars ($200.00) per month, commencing October, 1985, for the continuing support of the minor child.

From the above and foregoing FINDINGS OF FACT, the Court now makes and files the following:

ORDER

In accordance with said findings, IT IS HEREBY ORDERED, ADJUDGED AND DECREED That this Court has jurisdiction over the parties and subject matter of this action.

IT IS FURTHER ORDERED, That Vance Gillette is the father of Stephanie Nicole Fox.

IT IS FURTHER ORDERED, that Cheryle Fox continue to have custody of the said minor child.

IT IS FURTHER ORDERED, That the Respondent, Vance Gillette, shall pay, through the Clerk of District Court of McKenzie County, the sum of Two Hundred and no/hundredths Dollars ($200.00) per month, commencing October, 1985, for the continuing support of Stephanie Nicole Fox, and is further ordered to maintain medical, dental and optometric insurance on said minor child or be otherwise responsible for said child's medical, dental and optometric expenses, until said child reaches the age of eighteen (18) years or earlier ceases to be dependent upon the Petitioner, Cheryle Fox.

IT IS FURTHER ORDERED, that the Petitioner, McKenzie County Social Service Board, have Judgment against the Respondent Vance Gillette, in the amount of

Ten Thousand Three Hundred Sixty-Two and eleven/ hundredths Dollars ($10,362.11), which may be paid at the rate of One Hundred and no/hundredths Dollars ($100.00) per month, commencing October, 1985, to the Clerk of District Court of McKenzie County, North Dakota. Said amount represents the amount disbursed by McKenzie County Social Service Board for past care and support of said minor child. The foregoing obligation to make monthly payments toward said past care and support does not limit or otherwise effect the rights which the McKenzie County Social Service Board has under federal or state tax intercept programs.

IT IS FURTHER ORDERED, That the Respondent, Vance Gillette, shall, in accordance with Section 14-09-09.1 of the North Dakota Century Code, execute a wage assignment and file the same with the Clerk of District Court of McKenzie County, North Dakota.

IT IS FURTHER ORDERED, That the State Registrar of Vital Statistics prepare an amended birth registration consistent with the findings of this Court.

IT IS FURTHER ORDERED, That the Respondent, Vance Gillette, is responsible for costs and disbursements of suit.

Dated this 14 day of October, 1985.

By the Court:

/s/ Bert L. Wilson
Bert L. Wilson
District Judge

STATE OF MONTANA)
) ss
County of Glacier)

AFFIDAVIT OF SERVICE

Roger Smith, after being duly sworn, deposes and says:

That your affiant is the duly acting Deputy Sheriff of Glacier County acting as Deputy Sheriff to Jim Persling Sheriff of Glacier County;

That your affiant is a citizen of the United States; is over 21 years of age and it not a party to any cause pending between McKenzie County Social Service Board et al Plaintiff, and Vance Gillette Defendant;

That on the 22nd day of November, 1985, your affiant personally served upon Vance Gillette by delivering a copy of the Order upon the person of the above named Vance Gillette personally within the City of Cut Bank County of Glacier, State of Montana.

/s/ Roger Smith
Glacier County Deputy Sheriff

Subscribed and Sworn to before me this 22nd day of Nov. 1985.

/s/ Audrey Anderson
Notary Public for the State of Montana
Residing at Cut Bank
My Commission expires 1-13-86

STATE OF NORTH DAKOTA
COUNTY OF McKENZIE

DISTRICT COURT
NORTHWEST JUDICIAL DISTRICT

McKENZIE COUNTY SOCIAL SERVICES BOARD, STEPHANIE NICHOLE FOX, through Michon Sax as Guardian Ad Litem, and CHERYLE FOX,	)	
Plaintiffs,	)	Civil No. 4913
vs.	)	
VANCE GILLETTE,	)	
Defendant.	)	

ANSWER

AFFIRMATIVE DEFENSES

1. Respondent raises affirmative defenses as follows:

   a) Lack of subject matter jurisdiction over tribal members and reservation resident/petitioner Fox.

   b) a county-tribal agreement requires paternity and support action to be brought in the Fort Berthold Tribal Court. Petitioner Fox and County have an action in Fort Berthold Tribal Court for paternity and support against a different tribal member on behalf of Fox's second younger minor daughter.

   c) The tribal court has exclusive jurisdiction when paternity and custody and tribal members are involved. See 25 USC §1911.

d) The assignment by Fox is defective and contrary to federal law. The appointment of Sax as guardian as litem is defective for the same reasons.

e) The county's interest is solely economic; and ignores the psychological harm by filing stale claims such as this that could be written off under federal law and guidelines.

2. Complaint at No. I. Respondent admits McKenzie County Social Service Board, Sax, and Fox are petitioners. Respondent admits Fox and her minor daughter reside at Mandaree, ND - which is located on the Fort Berthold Indian Reservation.

3. Complaint at No. II. Respondent denies he resides at Bismarck, ND.

4. Complaint at No. III. Respondent admits he has never been married to Cheryle Fox.

5. Complaint at No. IV. Respondent denies he is the father of the minor child Stephanie Nichole Fox, born November 25, 1970. Respondent admits the child resides with her mother, who has legal custody, at Mandaree, ND.

6. Complaint at No. V. Respondent is without knowledge if Fox applied for support payments from McKenzie County.

7. Complaint at No. VI. Respondent is without knowledge if Fox made a valid assignment to the County and ND Social Service Board for support payments for herself or child under IV D and 50-9-06 NDCC.

8. Complaint at No. VII. Respondent is without knowledge if Fox received aid between 1977 and 1984 from the county for the child.

9. Complaint at No .VIII, IX, X. Respondent denies he has a duty to reimburse the county under state law; or for monthly payments or for other child support.

Dated this 18th day of December, 1985.

/s/ Vance Gillette
Box 909
Browning, MT 59417

(Filed August 20, 1986)

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Civil No. 11,153

McKenzie County Social Services Board, S.N.F. through Michon Sax as Guardian Ad Litem, and C.F.,
Petitioners and Appellees

v.

V.G.,
Respondent and Appellant

Appeal from the District Court of McKenzie County, Northwest Judicial District, the Honorable Bert L. Wilson, Judge.

REVERSED AND REMANDED.

Opinion of the Court by Meschke, Justice.

Anseth & Zander, P.O. Box 2536, Williston, ND 58801, for petitioners and appellees; argued by Janet Holter Zander.

Vance Gillette, Star Route Emmet, Garrison, ND 58540, for respondent and appellant.

McKenzie County Social Services v. V.G.
Civil No. 11,153

Meschke, Justice.

V.G. appeals from an order of the district court of McKenzie County determining that he is the father of S.N.F. and from an order denying his motion to vacate. We reverse and remand.

On November 25, 1970, S.N.F. was born out of wedlock to C.F. They received public assistance from the McKenzie County Social Service Board between 1977 and 1984. In 1985, McKenzie County, S.N.F. through Michon Sax as Guardian Ad Litem, and C.F. petitioned to establish that V.G. was the father of S.N.F. Petitioners sought $200 per month child support as well as $10,362.11 for past support provided by McKenzie County.

V.G. moved to dismiss the petition on the ground that the district court of McKenzie County lacked subject matter jurisdiction to hear and determine it. V.G. submitted a supporting affidavit denying that he was the father of S.N.F. and asserting that: 1) he is an enrolled member of the Three Affiliated Tribes of the Fort Berthold Indian Reservation; 2) C.F. and S.N.F. are enrolled members of the Three Affiliated Tribes residing on the Fort Berthold Indian Reservation; 3) "[t]he events and alleged paternity arose from the Fort Berthold Indian Reservation;" and 4) Three Affiliated Tribes had a tribal court with jurisdiction "to deal with reservation events and tribal members." The district court denied V.G.'s motion.

Pursuant to Section 14-17-09, N.D.C.C., the petitioners thereafter scheduled a pretrial informal hearing for September 30, 1985, and served V.G. with a notice of that

hearing on August 22, 1985. V.G. subsequently filed motions for reconsideration and for continuance which the district court denied. The district court's order denying continuance stated that the September 30, 1985 hearing was "an informal hearing" pursuant to Section 14-17-09, N.D.C.C., and there would be ample time for discovery and preparation if a trial was necessary.

At the hearing on September 30, 1985, the district court heard testimony about paternity and the public assistance provided by McKenzie County. V.G. did not appear or present evidence at the hearing. Thereafter, the district court made its recommendations[1] which in-

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1. Pre-trial recommendations are required in Section 14-17-12, N.D.C.C., which provides, in relevant part:

"1. On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

"a. That the action be dismissed with or without prejudice.

"b. That the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in subsection 5 of section 14-17-14, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best

(Continued on following page)

cluded a determination that V.G. was the father of S.N.F. The district court's order provided that the recommendations would become final unless V.G. showed good cause within 30 days after service of the order. V.G. responded with a motion to vacate and an answer. In his answer V.G. again denied he was the father of S.N.F. The district court denied V.G.'s motion, and he has appealed from the order making the recommendations final and from the order denying his motion to vacate.

V.G. contends that the state court lacks subject matter jurisdiction to hear and determine the petition because it is between Indians[2] and involves a claim arising on an Indian reservation. We agree.

Footnote continued—

interest of the child the court may order that the alleged father's identity be kept confidential. In that Case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

"c. That the alleged father voluntarily acknowledge his paternity of the child.

"2. If the parties accept a recommendation made in accordance with subsection 1, judgment shall be entered accordingly.

"3. If a party refuses to accept a recommendation made under subsection 1 and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial."

2. While McKenzie County is a non-Indian, its only apparent interest in the matter is through an assignment from the Indian mother of the child of "all rights to support from any other person she may have on her own behalf or on the behalf of the minor child." Generally, an assignee of a debt has no greater rights against a debtor than the assignor had. *First National Bank of Minor v. MacDonald Const. Co.*, 137 N.W.2d 667, 672 (N.D. 1965).

The "somewhat erratic" history of Indian jurisdiction in North Dakota was recently chronicled in *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, (Three Tribes I), 467 U.S. 138, 81 L.Ed.2d 113, 104 S.Ct. 2267 (1984), and *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, P.C.*, (Three Tribes II), 476 U.S. ....., 90 L.Ed.2d 881, 106 S.Ct. ..... (1986).

In *Three Tribes II, supra*, 476 U.S. at ....., 90 L.Ed.2d at 889, 106 S.Ct. at ....., the United States Supreme Court outlined the following analysis of Indian jurisdiction:

> "Our cases reveal a '"trend . . . away from the idea of inherent Indian sovereignty as a[n independent] bar to state jurisdiction and toward reliance on federal preemption."' . . . Yet considerations of tribal sovereignty, and the federal interests in promoting Indian self-governance and autonomy, if not of themselves sufficient to 'pre-empt' state regulation, nevertheless form an important backdrop against which the applicable treaties and federal statutes must be read. . . . Accordingly, we have formulated a comprehensive pre-emption inquiry in the Indian law context which examines not only the congressional plan, but also 'the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.'" [Citations omitted.]

In *Three Tribes II, supra*, the United States Supreme Court held that Public Law 280 (28 U.S.C.S. § 1360) preempted Chapter 27-19, N.D.C.C., ["Indian Civil Jurisdiction"] insofar as that chapter disclaimed jurisdiction over actions by tribal plaintiffs against non-Indian defendants

for which there was no other forum.[3] Thus, our Legislature was pre-empted from disclaiming that part of the jurisdiction that had been previously exercised in *Vermillion v. Spotted Elk*, 85 N.W.2d 432 (N.D. 1957).

In *Vermillion v. Spotted Elk, supra,* we held that state civil jurisdiction over Indian Country was foreclosed only in cases involving Indian land, and therefore our state courts had jurisdiction over actions between Indian plaintiffs and Indian defendants for torts committed on an Indian reservation.

In *Three Tribes I, supra,* 467 U.S. at 147-148, the United States Supreme Court recognized the "expansive" view of state court jurisdiction over Indian country taken in *Vermillion v. Spotted Elk, supra,* and limited that decision:

> ". . . [A] particular exercise of state authority may be foreclosed because it would undermine ' "the

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3. Pursuant to Public Law 280, in 1958 the North Dakota Constitution was amended to authorize the Legislature to provide for the acceptance of jurisdiction over Indian Country; *see* N.D. Const., Art. XIII, § 1(2). In 1963, the Legislature enacted Chapter 27-19, N.D.C.C. Section 27-19-01, N.D.C.C., provides:

> "*27-19-01. Assumption of jurisdiction.* In accordance with the provisions of Public Law 83-280 and section 1 of article XI (sic) of the Constitution of North Dakota, jurisdiction of the state of North Dakota shall be extended over all civil claims for relief which arise on an Indian reservation upon acceptance by Indian citizens in a manner provided by this chapter. Upon acceptance the jurisdiction of the state is to the same extent that the state has jurisdiction over other civil claims for relief, and those civil laws of this state that are of general application to private property have the same force and effect within such Indian reservation or Indian country as they have elsewhere within this state."

We interpreted this provision to completely disclaim the state jurisdiction recognized in *Vermillion v. Spotted Elk, supra. See e.g., In re Whiteshield*, 124 N.W.2d 694 (N.D. 1963).

> right of reservation Indians to make their own laws and be ruled by them.'" . . . Second, state authority may be pre-empted by incompatible federal law. . . . [T]he full breadth of state-court jurisdiction recognized in *Vermillion* cannot be squared with principles of tribal autonomy; to the extent that *Vermillion* permitted North Dakota state courts to exercise jurisdiction over claims by non-Indians against Indians or over claims between Indians, it intruded impermissibly on tribal self-governance. . . . " [Citations omitted.]

Three Tribes II, supra, teaches that the federal legislative plan embodied in Public Law 280 pre-empted disclaimer by North Dakota of one part of the jurisdiction previously extended in *Vermillion v. Spotted Elk, supra*, specifically: actions by Indian plaintiffs against non-Indian defendants for which there was no other forum. However, nothing in *Three Tribes II, supra*, suggests that Chapter 27-19, N.D.C.C., was pre-empted insofar as that chapter requires consent for jurisdiction in a case between Indians for conduct on the reservation. If there is an available forum in the tribal court, considerations of tribal sovereignty and the federal interest in promoting Indian self-governance and autonomy arise. *See Three Tribes II, supra; Three Tribes I, supra.*

This case is between enrolled members of Three Affiliated Tribes to determine the paternity of an Indian child living with her mother on the Indian reservation. V.G. denied paternity but, alternatively, alleged that "the events and alleged paternity" occurred on the reservation. There is nothing in this record to contradict the allegation that "paternity" occurred on the reservation. Three Affiliated Tribes has not consented to the exercise of state court jurisdiction.

We believe that the determination of the parentage of a child of Indian tribal members is a matter that is intimately connected with "'"the right of reservation Indians to make their own laws and be ruled by them."'" *Williams v. Lee*, 358 U.S. 217, 220, 79 S.Ct. 269, 3 L.Ed.2d 251 (1959), quoted in *Three Tribes I, supra*, 467 U.S. at 147; *see Fisher v. District Court*, 424 U.S. 382, 47 L.Ed.2d 106, 96 S.Ct. 943 (1976) [Montana state-court jurisdiction over adoption proceeding would interfere with tribal powers of self-government]. "[T]o allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." *Williams v. Lee, supra*, 358 U.S. at 223, 79 S.Ct. at ....., 3 L.Ed.2d at ..... Although a statute of limitations may conceivably bar the tribal remedy,[4] we observe that the tribal court was available to the petitioners unlike the situation in *Three Tribes II, supra*.

The petitioners assert that significant events within the state but outside of the reservation gave the district court jurisdiction. The petitioners rely on the facts that C.F. successfully applied for public assistance with McKenzie County outside of the reservation boundaries and that, at times, V.G. has resided off the reservation. We believe that these matters are insufficient to permit state court jurisdiction to hear and determine a claim between Indians for conduct on the reservation. As we have explained, the exercise of such jurisdiction would undermine the authority of the tribal courts over reservation affairs and thereby infringe on the right of the Indians to govern themselves. *Williams v. Lee, supra*, 358 U.S. at 223.

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4. *Compare Matter of Kary*, 376 N.W.2d 320, 322, fn. 3 (N.D. 1985).

We therefore conclude that the district court erred in determining that it had jurisdiction to hear and determine this petition. Because this conclusion is dispositive, we need not determine whether the district court erred in entering a final order based on a pretrial recommendation that was not accepted.

Accordingly, we reserve the district court order and remand with instructions to dismiss the petition.

/s/ Herbert T. Meschke
/s/ Beryl J. Levine
/s/ Illegible
/s/ Illegible
/s/ Illegible

28 U.S.C. § 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

42 USC § 602

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member

for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) [42 USCS § 606(b)(2)] (without regard to clauses (A) through (D) of such section) unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made;

Social Security Act: Part D. Child Support and Establishment of Paternity

42 U.S.C. § 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, lo-

cating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part [42 USCS §§ 651 et seq.] to all children (whether or not eligible for aid under part A [42 USCS §§ 601 et seq.] for whom such assistance is requested," there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part [42 USCS §§ 651 et seq.].

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties. The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part [42 USCS §§ 651 et seq.];

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved

under this part [42 USCS §§ 651 et seq.] as may be necessary to assure their conformity with the requirements of this part [42 USCS §§ 651 et seq.], and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 403(h)(1) [42 USCS § 603(h)(1)], or which is operating under a corrective action plan in accordance with section 403(h)(2) [42 USCS § 603(h)(2)]), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) [42 USCS § 603(h)] whether the actual operation of such programs in each State conforms to the requirements of this part [42 USCS §§ 651 et seq.];

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part [42 USCS §§ 651 et seq.] in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part [42 USCS §§ 651 et seq.] and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable

time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 453 [42 USCS § 653]; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part [42 USCS §§ 651 et seq.], which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part [42 USCS §§ 651 et seq.];

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E [42 USCS §§ 670 et seq.]), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 402 (a)(26) or 471(a)(17) [42 USCS §§ 602(a)(26), 671(a)(17)], and all other cases under this part [42 USCS §§ 651 et seq.]

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

(iii) the number of cases described in clause (i) in which support was collected during such fiscal year, and the total amount of such collections;

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(D) the status of all State plans under this part [42 USCS §§ 651 et seq.] as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part [42 USCS §§ 651 et seq.];

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate

requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in whhich an applicant for or recipient of aid under a State plan approved under part A [42 USCS §§ 601 et seq.] has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 402(a)(26)(B)(ii) [42 USCS § 602(a)(26)(B)(ii)]);

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part [42 USCS §§ 651 et seq.] during the fiscal year last ending prior to the submission of such report; and

(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 454(6) [42 USCS

§ 654(6)], (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A [42 USCS §§ 601 et seq.].

(b) Certification of child support obligations to Secretary of Treasury for collection. The Secretary shall, upon the request of any State having in effect a State plan approved under this part [42 USCS §§ 651 et seq.], certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954 [26 USCS § 6305] the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A [42 USCS §§ 601 et seq.]) which is assigned to such State or is undertaken to be collected by such State pursuant to section 454(6) [42 USCS § 654(6)]. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms. and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may. by regulation. establish criteria for accepting amounts for collection and

for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c) Revolving fund; appropriations. (1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 457 [42 USCS § 657] such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1954 [26 USCS § 6305].

(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 of the Internal Revenue Code of 1954 [26 USCS § 6305], reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d) Child support management information system. (1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in section 454(16) [42 USCS § 454(16)], unless he finds that such document, when implemented, will generally carry out the ob-

jectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system.

(B) contains a description of the proposed management system referred to in section 655(a)(1)(B) [42 USCS § 655(a)(1)(B)], including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a), on a continuing basis, review, assess, and inspect the planning, design, and operation

of, management information systems referred to in section 455(a)(1)(B) [42 USCS § 655(a)(1)(B)], with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 454(16) [42 USCS § 654(16)].

(B) If the Secretary finds with respect to any statewide management information system referred to in section 455(a)(1)(B) [42 USCS § 655(a)(1)(B)] that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(e) Technical assistance to States. The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 455(a)(1)(B) [42 USCS § 655(a)(1)(B)].

(f) Inclusion of medical support in child support orders. The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part [42 USCS §§ 651 et seq.] petition for the inclusion of medical support as part of any child support order whenever health care

coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under title XIX [42 USCS §§ 1396 et seq.] with respect to the availability of health insurance coverage.

§ 653. Parent Locator Service

(a) Establishment; purpose. The Secretary shall establish and conduct a Parent Locator Service, under the direction of the designee of the Secretary referred to in section 452(a) [142 USCS § 652(a)], which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)) information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.

(b) Disclosure of information to authorized persons. Upon request, filed in accordance with subsection (d) of any authorized person (as defined in subsection (c)) for the social security account number (or numbers, if the individual involved has more than one such number) and the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority

conferred by subsection (e), from any other department, agency, or instrumentality of the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1).

(c) "Authorized persons" defined. As used in subsection (a), the term "authorized person" means—

(1) any agent or attorney of any State having in effect a plan approved under this part [42 USCS §§ 651 et seq.], who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title [42 USCS §§ 601 et seq.]) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.

(d) Form and manner of request for information. A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported

by such documents as the Secretary may determine to be necessary.

(e) Compliance with request; search of files and records by head of any department, etc., of United States; transmittal of information to Secretary; reimbursement for cost of search; fees. (1) Whenever the Secretary receives a request submitted under subsection (b) which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c), he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs in-

curred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him. Whenever such services are furnished to an individual specified in subsection (c)(3), a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(f) Arrangements and cooperation and with State agencies. The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part [42 USCS §§ 651 et seq.] for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) and to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such State will undertake—

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title [42 USCS § 602(a)(26)] is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this title [42 USCS §§ 601 et seq.] determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) [42 USCS § 602(a)(26)(B)] that it is against the best interests of the child to do so, and

(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E [42 USCS §§ 670 et seq.], to secure support for such child from his parent (or from any other person legally liable for such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this title [42 USCS §§ 601 et seq., 670 et seq.] determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) [42 USCS 602(a)(26)(B)] that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective,

the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that, in any case in which support payments are collected for an individual with respect to whom an assignment under section 402(a)(26) [42 USCS § 602(a)(26)] is effective, such payments shall be made to the State for distribution pursuant to section 457 [42 USCS § 657] and shall not be paid directly to the family, and the individual will be notified at least annually of the amount of the support payments collected; except that this paragraph shall not apply to such payments (except as provided in section 457(c) [42 USCS § 657(c)]) for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A [42 USCS §§ 601 et seq.];

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), (B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administra-

tive cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), [and] (C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 464(a)(2) [42 USCS § 664(a)(2)], and (D) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved, or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into of financial arrengements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health and Human Services;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part [42 USCS §§ 651 et seq.] in another State,

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State, and

(D) in carrying out other functions required under a plan approved under this part [42 USCS §§ 651 et seq.];

(10) provide that the State will maintain a fund record of collections and disbursements made under the plan and have an adequate reporting system;

(11) provide that amounts collected as support shall be distributed as provided in section 457 [42 USCS § 657];

(12) provide that any payment required to be made under section 456 or 457 [42 USCS §§ 656, 657] to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

(14) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 452(d) [42 USCS § 652(d)], of an automatic data processing and infor-

mation retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfaceing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligi-

bility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 466(a) [42 USCS § 666(a)] through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 [42 USCS § 663] for the use of the Parent Locator Service established under section 453 [42 USCS § 653], provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from

overpayments made to the Secretary of the Treasury as set forth in section 464 [42 USCS § 664], and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976 [29 USCS § 49b; 42 USCS § 603a], whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 462(e) of this Act [42 USCS § 662(e)]) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 466 [42 USCS § 666], that the State (A) shall have in

effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21) (A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 466(e) [42 USCS § 666(e)]) under any obligation being enforced under this part [42 USCS §§ 651 et seq.], in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 458 [42 USCS § 658], provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision; and

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).

§ 655. Payments to States

(a) Amounts payable each quarter. (1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454 [42 USCS § 654], and

(B) equal to 90 percent (rather than the percent specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system) which the Secretary finds meets the requirements specified in section 454(16) [42 USCS § 654(16)], or meets such requirements without regard to clause (D) thereof [42 USCS § 654 (16)(D)].

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.[;]

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463 [42 USCS § 663]. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part [42 USCS §§ 651 et seq.].

(b) Estimate of amounts payable; installment payments. (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived. and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d), the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) [Repealed]

(d) State reports. Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a), there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a).

(e)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part [42 USCS §§ 651 et seq.] in cases where either the children on whose behalf the support is sought or their absent parents do

not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part [42 USCS §§ 651 et seq.] which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) [42 USCS § 658(b)] (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 454 [42 USCS § 654].

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter to be used by the Secretary in making grants under this subsection.

§ 656. Support obligation as obligation to State; amount; Discharge in bankruptcy

(a)(1) The support rights assigned to the State under section 402(a)(26) [42 USCS § 602(a)(26)] or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(3) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) A debt which is a child support obligation assigned to a State under section 402(a)(26) [42 USCS § 602(a)(26)] is not released by a discharge in bankruptcy under title 11, United States Code [11 USCS §§ 101 et seq.].

§ 657. Distribution of proceeds

(a) Amount collected during fifteen month period beginning July 1, 1975. The amounts collected as child support by a State pursuant to a plan approved under this part [42 USCS §§ 651 et seq.] during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have

been made by the State which have not been repaid, such amounts shall be paid to the family.

(b) Amount collected during any fiscal year beginning after September 30, 1976. The amounts collected as support by a State pursuant to a plan approved under this part [42 USCS §§ 651 et seq.] during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d)) be distributed as follows:

(1) the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the ex-

tent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Collection after termination of assistance; distribution of support proceeds. Whenever a family for whom support payments have been collected and distributed under the plan ceases to receive assistance under part A of this title [42 USCS §§ 601 et seq.], the State shall—

(1) continue to collect amounts of support payments which represent monthly support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under part A of this title [42 USCS §§ 601 et seq.], and pay all amounts so collected, which represent monthly support payments, to the family; and

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of support payments which represent monthly support payments from the absent parent and pay any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title [42 USCS §§ 601 et seq.].[.]

(d) Child support enforcement for certain children in foster care. Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E [42 USCS §§ 670 et seq.]—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance

payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

§ 658. Incentive payments to States

(a) In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this title [42 USCS §§ 601 et seq.], and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e)) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b).

(b)(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) or section 471(a)(17) [42 USCS §§ 602(a)

(26), 671(a)(17)] (with such total amount for any fiscal year being hereafter referred to in this section as the State's "AFDC collections" for that year), plus

(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part [42 USCS §§ 651 et seq.] (with such total amount for any fiscal year being hereafter referred to in this section as the State's "non-AFDC collections" for that year).

(2) If subsection (c) applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) if applicable) shall in no case exceed—

(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) if applicable) in the case of fiscal year 1986 or 1987;

(B) 105 percent of such dollar amount in the case of fiscal year 1988;

(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

(4) The Secretary shall make such additional payments to the State under this part [42 USCS §§ 651 et seq.], for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 455(a)(1)(A) [42 USCS § 655(a)(1)(A)] for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 455(a)(1)(A) [42 USCS § 655(a)(1)(A)] if those sections (including the amendment made by section 5(c)(2)A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

(c) If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 [42 USCS § 654] for which payment may be made under section 455 [42 USCS § 655] (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's "combined AFDC/non-AFDC administrative costs" for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) (with respect to such collections) shall be increased to—

(1) 6.5 percent, plus

(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

(d) In computing incentive payments under this section, support which is collected by one State on behalf of individuals residing in another State shall be treated as having been collected in full by each such State.

(e) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

§ 659. Enforcement of individual's legal obligations to provide child support or make alimony payments

(a) United States and District of Columbia to be subject to legal process. Notwithstanding any other provision of law (including section 207 [42 USCS § 407]),

effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Methods of service of legal process. Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 461 [42 USCS § 661] (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.

(c) Disclosure of information in answering interrogatories; disciplinary action or civil or criminal liability or penalty prohibited. No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 461(b)(3) [42 USCS § 661(b)(3)] shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.

(d) Notice. Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last-known home address.

(e) Variance in normal pay and disbursement cycles not required. Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(f) Non-liability of United States, disbursing officers, and governmental entities with respect to payments. Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear

and determine any civil action certified by the Secretary of Health and Human Services under section 452(a)(8) of this Act [42 USCS § 652(a)(8)]. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

§ 661. Regulations pertaining to garnishments Authority to promulgate.

(a) Authority to promulgate regulations for the implementation of the provisions of section 459 [42 USCS § 659] shall, insofar as the provisions of such section are applicable to moneys due from (or payable by)—

(1) the executive branch of the Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee),

(2) the legislative branch of the Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

(b) Requisite content of promulgated regulations.

Regulations promulgated pursuant to this section shall—

(1) in the case of those promulgated by the executive branch of the Government, include a require-

ment that the head of each agency thereof shall cause to be published, in the appendix of the regulations so promulgated, (A) his designation of an agent or agents to accept service of process, identified by title of position, mailing address, and telephone number, and (B) an indication of the data reasonably required in order for the agency promptly to identify the individual with respect to whose moneys the legal process is brought.

(2) in the case of regulations promulgated for the legislative and judicial branches of the Government set forth, in the appendix to the regulations so promulgated, (A) the name, position, address, and telephone number of the agent or agents who have been designated for service of process, and (B) an indication of the data reasonably required in order for such entity promptly to identify the individual with respect to whose moneys the legal process is brought, and

(3) provide that (A) in the case of regulations promulgated by the executive branch of the Government, each head of a governmental entity (or his designee) shall respond to relevant interrogatories, if authorized by the law of the State in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments, and (B) in the case of regulations promulgated for the legislative and judicial branches of the Government, the person or persons designated as agents for service of process in accordance with paragraph (2) shall respond to relevant interrogatories if authorized by the law of the State in which legal process will issue, prior to for-

mal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

(c) Priority of processes. In the event that a governmental entity, which is authorized under this section or regulations issued to carry out this section to accept service of process, pursuant to the provisions of subsection (a), is served with more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

§ 662. Definitions

For purposes of section 459 [42 USCS § 659]—

(a) The term "United States" means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United States.

(b) The term "child support", when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect

to which such individual has such an obligation, and (subject to and in accordance with State law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; such term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(c) The term "alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(d) The term "private person" means a person who does not have sovereign or other special immunity or privilege which causes such person not to be sugject to legal process.

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which—

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 228(h)(3) of this Act [42 USCS § 428(h)(3)]) or other payments to such individual under the insurance system established by title II of this Act [42 USCS §§ 41 et seq.] or any other system or fund established by the United States (as defined in subsection (a)) which provides for the payment of pensions, retirement or retired pay, annuities, depen-

dents or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans' Administration as pension, or any payments by the Veterans' Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(1) are owed by such individual to the United States,

(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal employment taxes, and fines and forfeitures ordered by court-martial,

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts

pursuant to section 3402(i) of the Internal Revenue Code of 1954 [26 USCS § 3402(i)] may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

(4) are deducted as health insurance premiums,

(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

§ 663. Use of Parent Locator Service in connection with the enforcement or determination of child custody and in cases of parent kidnaping of a child

(a) Agreements with States for use of Parent Locator Service. The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 453 [42 USCS § 653] shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(b) Requests from authorized persons for information. An agreement entered into under this section

shall provide that the State agency described in section 454 [42 USCS § 654] will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(c) Information which may be disclosed. Information authorized to be provided by the Secretary under this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 453 [42 USCS § 653], and a request for information by the Secretary under this section shall be considered to be a request for information under section 453 [42 USCS § 653] which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section.

(d) "Custody determination" and "authorized person" defined. For purposes of this section—

(1) the term "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term "authorized person" means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty

or authority under the law of such State to enforce a child custody determination;

(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

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50-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Applicant" shall mean a person or agency having the custody of a dependent child making application for aid for such child under the provisions of this chapter.
2. "Assistance" shall mean money payments with respect to, or goods and services provided for dependent children, including payments for the care of unmarried mothers and their infants.
3. "County agency" shall mean the county social service board in each of the counties of the state.
4. "Dependent child" shall mean any needy child:
   a. Who is living in the home of a relative by birth, marriage, or adoption, who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is:
      (1) Under the age of eighteen years;
      (2) Under the age of twenty-one years and physically or mentally incapacitated; or
      (3) Under the age of twenty-one years and a student regularly attending and making satisfactory progress in pursuance of a course of study of academic or vocational training designed to fit him for gainful employment.

b. Under the age of twenty-one years, who is living in a licensed foster home or in a licensed child-caring or child-placing institution:

(1) Who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of the parent;

(2) Who is abandoned by his parent, guardian, or custodian;

(3) Whose parent, guardian, or custodian is unable, neglects, or refuses to provide proper or necessary subsistence, education, medical or surgical care, or other care necessary for his health, morals, or well-being; or

(4) Who is in need of special care as provided by a private agency for which his parent, guardian, or custodian is unable, neglects, or refuses to provide.

c. Under the age of twenty-one years, who is living in an adoptive home and would in all probability go without adoption except for acceptance by the adoptive family, and whose adoptive family does not have the economic ability and resources as established by guidelines and rules of the state agency to take care of the special needs of such child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of such child, in which case the state agency may make payments to the adoptive parents in accordance with the provisions of this chapter and the rules and regulations established thereunder.

Under this chapter no fee shall be paid for the adoptive study or the supervision and evaluation of the placement.

5. "Private agency" shall mean a private child-caring or child-placing agency duly licensed under the laws of North Dakota, or a private maternity home providing special care exclusively for unmarried expectant mothers or mothers and their infants, and duly licensed under the laws of North Dakota.

6. "State agency" means the North Dakota department of human services.

50-09-02. Duties of the state agency. The state agency shall:

1. Take such action and make such rules and regulations as may become necessary to entitle the state to receive aid from the federal government for aid to dependent children in North Dakota.

2. Supervise the administration of assistance to dependent children throughout the state of North Dakota.

3. Take such action, give such directions, and promulgate such rules and regulations as may be necessary or desirable to carry out the provisions of this chapter, including the adoption and application of suitable standards and procedure to ensure uniform and equitable treatment of all applicants for aid to dependent children.

4. Cooperate with the federal government in matters of mutual concern pertaining to aid to dependent children, including the adoption of such methods of administration as are found by the federal gov-

ernment to be necessary for the efficient operation of the plan for such assistance.

5. Provide such qualified employees and representatives as may be necessary.

6. Prescribe the form of and print and supply to the county agencies blanks for applications, reports, and such other forms as it may deem necessary and advisable.

7. Have authority to establish and maintain personnel standards on a merit basis for personnel employed by the state and the county public assistance agencies not covered by a statewide merit system.

8. Make such reports in such form and containing such information as the federal government from time to time may require.

9. Comply with such provisions, rules, and regulations as the federal government, from time to time, may find it necessary to make to assure the correctness and verification of the reports to be made.

10. Publish a biennial report and such interim reports as may be deemed necessary.

11. Administer all funds appropriated or made available to it for the purpose of carrying out the provisions of this chapter.

12. Act as the official agency of the state in the administration of the child support enforcement program in conformity with title IV-D of the Social Security Act, as amended, and to direct and supervise county administration of that program.

50-09-03. Duties of county agency. In the administration of aid to dependent children, a county agency shall:

1. Administer the provisions of this chapter in its county, subject to the rules and regulations prescribed by the state agency pursuant to the provisions of this chapter.
2. Report to the state agency at such times and in such manner and form as the state agency, from time to time, may direct.
3. Submit annually to the board of county commissioners of each county a budget containing an estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this chapter.
4. Cooperate with juvenile courts and licensed children's agencies.
5. Administer the child support enforcement program under the direction and supervision of the state agency in conformity with title IV-D of the Social Security Act, as amended. In administering the program, the county agency shall have the authority to contract with any public or private agency or person to discharge their child support enforcement duties.

50-09-04. Preservation and protection of religious faith. The county and state agencies shall preserve and protect the religious faith of children coming under their jurisdiction.

50-09-05. Eligibility for assistance. Repealed by S.L. 1975, ch. 447, § 5.

50-09-06. Application for assistance—Assignment of support rights. Application for aid to a dependent child under this chapter shall be made to the county agency in the manner and form prescribed by the state agency. The application shall contain such information as the state agency may require, except that application for aid to a dependent child living in a home maintained and operated or selected by a private agency may be made direct to the state agency, and the action of the state agency in approving and granting assistance in such case shall be final and binding on the county agency. An applicant for assistance under this chapter is deemed to have assigned to the state agency and county agency at the time of application all rights to child support from any other person the applicant may have in his own behalf or in behalf of any other family member for whom application is made. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the applicant is eligible for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

50-09-07. Investigation by county agency. Whenever a county agency shall receive an application for assistance, or assistance has been granted, under this chapter, the agency promptly shall make an investigation and record of the circumstances of the applicant, or child, or both, in order to ascertain the facts supporting the application, or the granting of assistance, and shall obtain such other information as may be required by the rules and regulations of the state agency.

50-09-08. Investigations—Power of county agencies, state agency, and employees. In the investigation of applications under the provisions of this chapter, the county agencies, the state agency, and the officials and employees of such agencies charged with the administration and enforcement of this chapter may:

1. Conduct examinations.
2. Require the attendance of witnesses and the production of books, records, and papers.
3. Make application to the district court of the county to compel the attendance of witnesses and the production of books, records, and papers.
4. Request from state, county, and local agencies information deemed necessary to carry out the child support enforcement program. All officers and employees of state, county, and local agencies shall cooperate with the state and county agency in locating absent parents of children to whom an obligation of support is owed or on whose behalf assistance is being provided and, on request, shall supply the state or county agency with available information relative to the location, income, social security number, and property holdings of the absent parent, notwithstanding any provision of law making that information confidential. Any person acting under the authority of the state agency who pursuant to this subsection obtains information from the office of the state tax commissioner the confidentiality of which is protected by law shall not divulge such information except to the extent necessary for the administration of the child support enforcement program or when otherwise directed by judicial order or when otherwise provided by law.

The officers and employees designated by the county agencies or the state agency may administer oaths and affirmations.

50-09-08.1. Stepfather's liability for dependent child. Repealed by S.L. 1971, ch. 153, § 2.

50-09.09. Award of assistance. Upon completion of the investigation of an applicant for assistance under this chapter, the county agency or the private agency shall determine, in accordance with the rules and regulations of the state agency:

1. That the applicant is eligible for assistance under the provisions of this chapter;
2. The amount of assistance the applicant shall receive; and
3. The date upon which such assistance shall begin.

In all cases, a statement of the findings of the county agency or the private agency forthwith shall be transmitted to the state agency.

50-09-10. Amount of assistance—Consideration of stepfather's income. The amount of assistance which shall be granted with respect to any dependent child under the provisions of this chapter shall be determined with due regard to:

1. His requirements;
2. The conditions existing in his case; and
3. The income and resources determined to be available to him from whatever source.

Assistance shall be sufficient when added to the income and resources available to a dependent child to provide him with a reasonable subsistence compatible with health and well-being.

In the case of a needy dependent child as defined in section 50-09-01 who lives with his mother and stepfather, the amount of aid granted pursuant to this chapter shall be computed after consideration is given to the income of the stepfather. The county agency granting aid shall determine if the stepfather is able to support the child either wholly or in part. Said determination shall be based upon a standard which takes into account the stepfather's or any other income, the conditions existing in the individual case, and the dependent child's requirements.

50-09-10.1. State agency authorized to make seasonal adjustments to payment levels. The state agency shall make payments under the aid to families with dependent children program in amounts provided by law, except that for not more than six months in any calendar year the state agency may increase the rate of payment, except as may be limited by legislative appropriations, by a rate not to exceed ten percent of such amount to provide for increased costs incurred by recipients during months of increased living costs. This section shall authorize payments greater than the three hundred fifteen dollar-per-month level established for a family of four in section 6 of chapter 33 of the 1973 Session Laws.

50-09-11. Redetermination of awards. Awards of assistance may be changed or withdrawn whenever the circumstances have altered sufficiently to warrent such action. If at any time during the continuance of aid to dependent children the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him, he shall notify the county agency of this fact immediately on the receipt or possession of such additional income or resources.

50-09-12. Records—State agency to make rules governing—Use of by other agencies limited. The rulemaking power of the state agency shall include the power to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the state and county agencies. Such rules and regulations shall provide that upon the personal written request of any elected public official the state or county agency shall open for his inspection the records of the names, addresses, and amounts of assistance, except that foster home cases involving unmarried mothers shall not be so open for such inspection. Such information shall not be used for any political or commercial purpose or made public in any manner. The use of such records, papers, files, and communications by any other agency, department, or government official to which they may be furnished shall be limited to the purposes for which they are furnished. Such office or official shall make adequate regulations or orders, consistent with the rules and regulations of the state agency, for the custody and use of such documents in its possession.

50-09-13. Disclosure of information contained in records—Penalty. Repealed by S.L. 1977, ch. 451, § 2.

50-09-14. Appeal and hearing. An applicant for or recipient of aid to dependent children under the provisions of this chapter, aggrieved because of a county agency's decision or delay in making a decision, may appeal to the state agency in the manner prescribed by the state agency and shall be afforded a reasonable notice and opportunity for a fair hearing by the state agency. The state agency, on its own motion, may review individual cases and make determinations which shall be binding

upon the county agency. An applicant or recipient aggrieved by any such determination, upon request, shall be afforded reasonable notice and opportunity for a fair hearing by the state agency. All decisions of the state agency made on an appeal shall be final and shall be binding upon and shall be complied with by the county agency.

50-09-15. Assistance for dependent children not assignable. Assistance awarded under this chapter shall not be transferable or assignable at law or in equity. None of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

50-09-16. Aid to dependent children fund—Receipts for moneys received. The state agency shall establish a fund to be known as "North Dakota aid to dependent children fund". All moneys that shall be received by the state agency for aid to dependent children purposes from the state of North Dakota, from any of the counties within the state, or from the United States under the provisions of the Social Security Act, or from any other source, shall be placed in such fund. The state agency shall issue in triplicate receipts for all moneys received for aid to dependent children. Such receipts shall show the dates upon and sources from which the money was received and there shall be delivered forthwith to the person, officer, or agent making payment a receipt for such payment.

50-09-17. Disbursements of aid to dependent children fund—How made—Payment of aid and expenses of state agency. Disbursements from the aid to dependent children fund shall be made only for the purposes of this chapter, which shall include:

1. All payments for aid to dependent children.
2. All payments for expenses of the state agency incident to the administration of aid to dependent children in this state.

All disbursements from such fund shall be made only by checks or warrants drawn on the aid to dependent children fund. Such checks or warrants shall be drawn only by persons who are duly authorized so to do by resolution of the state agency.

50-09-18. Persons handling money of fund bonded. All persons having any control over or who handle any money of the aid to dependent children fund shall be bonded in such sum as the state agency by resolution may require.

50-09-19. Care of child in boarding home or child-placing agency—How paid. All bills for the care of dependent children maintained in a licensed boarding home or under the custody of a private agency, and for the care of unmarried expectant mothers or mothers and their infants by a private agency shall be submitted to the state agency by the person or agency in whose care the child has been placed. Such bills shall be subject to the audit and approval of the state agency.

50-09-20. Appropriation of county funds. For the purpose of carrying out the provisions of this chapter, the board of county commissioners of each county annually shall appropriate and make available an amount sufficient to pay:

1. Local expenses of administration and the county's share of assistance payments as specified in subsection 1 of section 50-09-21; and

2. Local expenses of administration of the child support enforcement program.

If a financial condition of any county is such that it cannot make an appropriation or levy a tax for aid to dependent children or cannot issue warrants legally in an amount sufficient to provide the necessary funds to comply with the provisions of this chapter, the board of county commissioners shall report such fact to the state agency. After a hearing before the state agency, and such investigation as the state agency may make, the state agency may increase the amount to be supplied from state funds and adjust accordingly the amount to be supplied from county funds.

50-09-20.1. Amounts state liable for—Reimbursement by state. The state agency shall reimburse each county, upon claim being made therefor by the county agency, for fifty percent of the amount expended for the child support enforcement program in the county in excess of the amount provided by the federal government for child support enforcement.

50-09-21. Amount county liable for—Reimbursement by county. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for one-fourth of the amount expended for aid to dependent children in such county, in excess of the amount provided by the federal government for assistance payments to dependent children, except assistance payments for dependent children defined in subdivision b of subsection 4 of section 50-09-01, for which the county share of payment shall be reimbursed to the state agency by the county liable therefor under chapter 50-02.

50-09-22. Procedure for reimbursement. The state agency shall keep records and accounts in relation to the expenditures for aid to dependent children in each county in North Dakota. Claims for reimbursements under the provision of section 50-09-21 shall be presented by the state agency to the board of county commissioners at the end of each calendar month. The state agency shall certify to each county the total amount paid with respect to aid to dependent children eligible for aid from that county, and the county's share of such payments. The amount so certified shall be paid to the state agency by the county treasurer upon the audit and approval of the claim in the manner provided by law. Nothing contained herein shall prevent the state agency, in cases where assistance is granted to, or on the behalf of unmarried mothers or the dependent children of unmarried mothers, from electing to assume the payment thereof without reporting the same to the board of county commissioners upon a claim for reimbursement: an election by the state agency to assume such payments without reporting the same to the counties shall relieve the counties of any liability as to such payments, but shall in no manner affect the liability of the counties as to any claim duly reported by the state agency for reimbursement.

50-09-23. Fraudulent acts—Penalty. Repealed by S.L. 1975, ch. 106, § 673.

50-09-24 Limitations of chapter. All assistance awarded under this chapter shall be deemed to be awarded and to be held subject to the provisions of any amending or repealing act which may be passed, and no recipient shall have any claim for compensation, or otherwise, because his assistance has been affected in any way by any amending or repealing act.

Supreme Court, U.S.
FILED
MAR 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-996

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1986

McKENZIE COUNTY SOCIAL SERVICES BOARD, S.N.F., THROUGH MICHON SAX AS GUARDIAN AD LITEM, AND C.F.,

Petitioners,

vs.

V.G.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH DAKOTA

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the exercise of state jurisdiction to determine the parentage of an Indian child residing on the Reservation, whose natural mother and putative father are members of the same Indian Tribe, interferes with Tribal powers of self-government and undermines the authority of Tribal courts over Reservation affairs and thereby infringes on the right of Indians to govern themselves.

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Reasons for Not Granting the Writ:

I. Petitioner's assertions fly in the face of one hundred fifty years of federal Indian legal history and the decisions of this court recognizing the right of Indian tribes to exclusive jurisdiction over the domestic relations of their members. 3

II. This is a case to determine paternity between enrolled members of the same tribe. The disputed matter in question arose from activity on the reservation, placing it squarely within the Williams v. Lee Analysis. 5

III. The Federal Social Security Act does not confer sole jurisdiction to the North Dakota courts and does not limit tribal sovereignty or Indian rights. 9

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JURISDICTIONAL STATEMENT

Contrary to Petitioners' assertions (Petition for Writ of Certiorari, p. 2), the North Dakota Supreme Court did not conclude that "....State laws.... were contrary to federal Indian law and policy." Rather it held that the state court lacked subject matter jurisdiction to hear and determine the petition for paternity because it was between Indians and involved a claim arising on an Indian reservation. The state law was simply held inapplicable in this instance. Thus 28 U.S.C. §1257(c)(1) does not compel review by this Court. No state statute was struck down nor found to be repugnant to the Constitution, treaties, or laws of the United States.

Neither did the North Dakota Supreme Court specially set up any right, privilege or immunity or claim any such right, privilege or immunity under the Constitution treaties, or statutes of the United States. The North Dakota Supreme Court did not bestow special privileges or protections not recognized by federal Indian law. As such, neither can 28 U.S.C. 1257 (c)(2) compel review by this Court. The North Dakota Supreme Court correctly applied federal law in determining that the exercise of state jurisdiction in this instance would infringe on the right of Indians to govern themselves.

Petitioners further urge the application of Rule 17.1(b), Rules of the Supreme Court of the United States,

contending that the North Dakota Supreme Court has decided a federal question in a way in conflict with the decision of the New Mexico Supreme Court, **State ex rel. Dept. of Human Serv. v. Jojola,** 660 P2d 590 (1983), Cert. Den. 464 U.S. 803. However, subsequent to the filing of an appeal in **Jojola,** supra, the case became moot because the Respondent Human Services Department adopted the position urged by Petitioner Jojola. There was no justiciable case or controversy because the Department codified its policy decision to defer to Indian Tribal sovereignty in paternity determinations. **Jojola v. State of New Mexico,** No. 82-2049, Motion of Appellee to Dismiss, page 5, July 12, 1983. Formal changes in the Department's policy went beyond a mere cessation of challenged activity: the deferral to Indian Tribal sovereignty in paternity determinations is enforced by the courts in New Mexico as the law of the state. Therefore, despite the decision by the New Mexico court, the apparent conflict is rendered moot and Rule 17.1(b) does not compel review either.

STATEMENT OF THE CASE

The following additional facts should be added to those presented in Petitioners' Statement of the Case:

The McKenzie County Social Services

entered into a Cooperative Agreement and Contract with the Three Affiliated Tribes of Fort Berthold, pursuant to federal law, for the processing of paternity and child support cases in Tribal Court involving Tribal members on June 15, 1984. The Agreement was signed by the parties five months before the present matter was filed in the State District Court, November 7, 1984. Subsequently, Petitioners refiled in State District Court on January 15, 1985, exactly seven months after the Cooperative Agreement was entered into.

ARGUMENT

I.

PETITIONERS' ASSERTIONS FLY IN THE FACE OF ONE HUNDRED FIFTY YEARS OF FEDERAL INDIAN LEGAL HISTORY AND THE DECISIONS OF THIS COURT RECOGNIZING THE RIGHT OF INDIAN TRIBES TO EXCLUSIVE JURISDICTION OVER THE DOMESTIC RELATIONS OF THEIR MEMBERS.

Recently this Court reasserted the long standing principle that a State may not infringe on the right of reservation Indians to make their own laws and be ruled by them. In **Three Affiliated Tribes v. Wold Engineering (Three Tribes II)**, 476 U.S. _____, 90 L. Ed. 2d 881, 106 S

Ct _____ (1986), this Court, in striking down a North Dakota statute requiring the Tribes to consent to suit as defendant in order to use the State court as plaintiff, specifically noted that the determination of parentage of children and obligations for the support of children "... clearly encompass areas of traditional tribal control ..." relative to Indian children. **Three Tribes II**, supra, citing **Fisher v. District Court**, 424 US, at 388-389, 47 L Ed2d 106, 96 S Ct 943 (1976) and **United States v. Quiver**, 241 US 602, 60 L Ed 1196, 36 S Ct 699 (1916); See also **Montana v. United States**, 450 US 544, 67 L Ed 2d 493, 101 S Ct 1245 (1981); **Santa Clara Pueblo v. Martinez**, 436 US 49 (1978). In noting that the North Dakota statute in question would have allowed state civil law to control "**... even in cases that arise on the reservation, that involve only Indians, and that concern subjects which are within the jurisdiction of the tribal court...**" **Three Tribes II**, supra at 883, (emphasis added), this Court concluded that such a result simply could not be reconciled with Congress' jealous regard for Indian self-governance. "A tribe's power to prescribe the conduct of tribal members has never been doubted, and our cases establish that 'absent governing Acts of Congress,' a State may not act in a manner that 'infringe[s] on the right of reservation Indians to make their own laws and be ruled by them.'" **New Mexico v. Mescalero Apache Tribe**, 462 US, at 332 (1983) 76 L Ed 2d 611, 103 S Ct 2378 (quoting **McClanahan v Arizona State**

Tax Comm'n., 411 US, at 171-172, 36 L Ed 2d 129, 93 S Ct 1257 (1973).

The executive branch of the federal government has also found that Tribes exercise exclusive jurisdiction over domestic relations. Powers of Indian Tribes, 55 I.D. 14, October 25, 1934, 1 Opinions of the Solicitor, Department of the Interior, 445.

II.

THIS IS A CASE TO DETERMINE PATERNITY BETWEEN ENROLLED MEMBERS OF THE SAME TRIBE. THE DISPUTED MATTER IN QUESTION AROSE FROM ACTIVITY ON THE RESERVATION, PLACING IT SQUARELY WITHIN THE WILLIAMS v. LEE ANALYSIS.

In **McKenzie County Social Services Board v. V.G.**, 392 NW2d 399 (N.D. 1986), every activity giving rise to the paternity claim between mother and Respondent occurred while they were both residents of their own reservation. North Dakota merely received an assignment from the Indian mother of the child of all rights to any support she may have on her own or on behalf of the minor child. Clearly, the Indian mother could not have sued Respondent for paternity in the North Dakota District Court because the paternity proceeding is litigation arising on the Indian Reservation. **Fisher v. District Court**, supra, 424 U.S. at 389.

North Dakota was subrogated to the claims of the Indian mother. The state's claims are no greater than those of the Fort Berthold Indian mother. **United States v. Munsey Trust Co.**, 332 U.S. 234, 91 L.Ed 2022, 67 S Ct 1599 (1947); **Phoenix Insurance Company v. Erie Transportation Co.**, 117 U.S. 312, 29 L. Ed. 873, 6 S Ct 750 (1886); **First National Bank of Minot v. MacDonald Const. Co.**, 137 N.W.2d 667, 672 (N.D. 1965).

The Williams test, **Williams v. Lee**, 358 US 217, 3 L.Ed. 2d 251, 79 S Ct 269 (1959) requires that a reviewing court determine whether the assertion of state court jurisdiction infringes on the right of reservation Indians to make their own laws and be ruled by them. It is difficult to perceive a matter more critical to the self-government of Indian people than the jurisdiction to establish parentage and the family relationship. **Nofire v. United States**, 164 U.S. 657 (1897); **Fisher**, supra; **Quiver**, supra.

This Court further concluded in **Fisher**, supra, that since the litigation therein involved only Indians, at least the same standard set forth in **Williams**, supra, must be met before state courts may exercise jurisdiction. Citing **Mescalero Apache Tribe v. Jones**, 411 U.S. 145, 148, 93 S Ct 1267, 36 L. Ed. 2d 114 (1973) and **McClanahan**, supra. Thus, contrary to Petitioners' assertion, the **Williams** test has been properly applied in this matter. There were no "off reservation activities" of the Tribal members herein relative to the paternity question. The record discloses

none. There is no ground why this cause should be reviewed by this Court.

The 1851 Treaty of Fort Laramie reserved land for the Arickara, Mandan and Hidatsa Tribes (Three Affiliated Tribes of Fort Berthold). Such treaty did not confer state jurisdiction or subject the Tribes to such jurisdiction. In 1935, the Tribes adopted a constitution and bylaws pursuant to Section 16 of the Indian Reorganization Act,[1] which as this Court noted in **Fisher**, supra, was an act specifically intended to encourage Indian tribes to revitalize their self-government. The powers of the Tribes stated therein were powers reserved by Indian Tribes, not powers conferred upon them. Pursuant to the Constitution and Bylaws of the Three Affiliated Tribes, a Tribal Court was established and vested with jurisdiction to extend "to all cases and controversies in law, equity and custom arising under the laws of the Three Affiliated Tribes." Chapter 1, Section 2.1, Fort Berthold Tribal Code. Further, Chapter 12, Sections 1 through 27 grants jurisdiction to the Tribal Court over paternity actions among Tribal members. The Three Affiliated Tribes clearly have acknowledged and exercised their inherent

---

1. The Constitution and Bylaws have been amended by the Tribes eight times, the last being approved by the Secretary of the Interior, June 18, 1985.

sovereign power to determine domestic relations among tribal members. To subject this important paternity determination to state court jurisdiction clearly would infringe on the right of Indians to make their own laws and be ruled by them. **Williams**, supra.

In **Fisher**, supra, this Court stated:

> **State-court jurisdiction plainly would interfere with the powers of self-government conferred upon the Northern Cheyenne Tribe and exercised through the Tribal Court.** It would subject a dispute arising on the reservation among reservation Indians to a forum other than the one they have established for themselves. As the present record illustrates, it would create a substantial risk of conflicting adjudications affecting the custody of the child and would cause a corresponding decline in the authority of the Tribal Court
>
> Since the adoption proceeding is appropriately characterized as litigation arising on the Indian Reservation, the jurisdiction of the Tribal Court is exclusive.

Fisher, supra, at 387, 388 (Emphasis added).

This Court in **Fisher**, supra, plainly applied the interference and infringment test of **Williams**, supra, in a setting factually similar to the instant one. The determination of domestic relations between Tribal members is traditionally and currently a matter exclusively for Tribes to decide. To do otherwise and allow a state to make such determinations infringes on the

right of Indians to make their own laws and be governed by them.

The activities which are at the center of this matter undeniably occurred on the Fort Berthold Indian Reservation. **McKenzie County v. V.G.**, supra. No activity relevant to a determination of paternity between Tribal members occurred off the reservation. Thus, the North Dakota Supreme Court applied the infringement analysis of **Williams**, supra, and **Fisher**, supra. No new privilege was created. No new status was created. The North Dakota Supreme Court did not misapply or ignore federal Indian law as Petitioners contend. It did not create a new rule of law. The North Dakota Supreme Court properly followed the mandate of this Court in **Fisher**, supra. There is no treatment of a federal question in that decision which would require a review by this Court.

III.

THE FEDERAL SOCIAL SECURITY ACT DOES NOT CONFER SOLE JURISDICTION TO THE NORTH DAKOTA COURTS AND DOES NOT LIMIT TRIBAL SOVEREIGNTY OR INDIAN RIGHTS.

Under the Social Security Act, Child Support and Establishment of Paternity, 42 USC Sections 651 through 663, a State plan must comply with the federal requirements for the state to participate in the program. **King v. State**, 392 U.S. 309 (1968). The federal authority

requires, in part:

> A state plan for aid and services to needy families with children must: ... provide that the State has in effect a plan approved under part D (42 U.S.C. 651 et seq.) and operate a child support program in conformity with such plan. 42 U.S.C. § 602.

Said plan then triggers the following requirement:

> **provide for entering into cooperative arrangements with appropriate courts and law enforcement officials** (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan; 42 U.S.C. 654 (7).

> It is further provided under the Act that :

> (4)(B) in the case of any child with respect to whom such assignments is effective, to secure support for such child from his parent (or from any other person legally liable for such support)...utilizing any reciprocal arrangements adopted with other States..., 42 U.S.C. 654 (4)(B) (emphasis added).

The rule established by a series of cases in this Court in resolving issues of whether a general federal act limits tribal sovereignty or other federally guaranteed Indian rights is that Indian rights will not be deemed affected unless there are clear indications that Congress intended

to limit or extinguish such rights. **Merrion v. Jicarilla Apache Tribe,** 455 U.S. 130, 71 L.Ed.2d 21 (1982) (finding no clear indications that Congress intended implicitly to deprive the Tribe of taxing power in enacting, inter alia, national energy legislation); **Squire v. Capoeman,** 351 U.S. 1 (1956) (held general federal income tax inapplicable to income from trust allotments in light of language and purpose of the General Allotment Act); **Morton v. Mancari,** 417 U.S. 535 (1974) (held Equal Employment Opportunity Act of 1972, guaranteeing nondiscrimination in federal employment, did not repeal preexisting Indian preference statutes); **Rice v. Rehner,** ____ U.S. ____, 103 S Ct 3291 (1983) (repeal by implication of an established tradition of Indian immunity or self-governance is disfavored).

In those instances where the conflicting general federal law is one regulating Indians in Indian country, the Supreme Court has said that such statutes should be construed to comport with principles of tribal sovereignty. In **Ramah Navajo School Board v. Bureau of Revenue,** ____ U.S. ____, 73 L.Ed.2d 1174, 102 S Ct 3394 (1982), the Court said:

> We have consistently admonished that federal statutes and regulations relating to Tribes and tribal activities must be "construed generously in order to comport with...traditional notions of [Indian] sovereignty and with the federal policy of encouraging tribal independence. **White Mountain, supra,** 448 U.S., at 144; see also **McClanahan v. Arizona State Tax Comm'n,** 411 U.S., at 174-175 and n 13 (1973);

> **Warren Trading Post Co. v. Arizona Tax Comm'n,** 380 U.S., at 690-691. This guiding principle helps relieve the tension between emphasizing the pervasiveness of federal regulation and the federal policy of encouraging Indian self-determination. Although we must admit our disappointment that the courts below apparently gave short shrift to this principle and to our precedents in this area, we cannot and do not presume that state courts will not follow both the letter and the spirit of our decisions in the future.

Id., 73 L.Ed.2d 1174 at 1185; accord, **Merrion v. Jicarilla Apache Tribe,** supra; **Santa Clara Pueblo v. Martinez,** supra.

It is presumed that Congress would have included an express grant of jurisdiction to North Dakota if it had so intended for when Congress legislates on jurisdictional matters, it does so with the knowledge of the current state of the law. **Califano v. Sanders,** 430 U.S. 99 (1977).

First, as discussed above, there is no Congressional intent manifested to actually confer jurisdiction in this type of case solely on state courts. Rather, the legislation encourages intergovernmental cooperation in support collection. In addition to the general provision dealing with intergovernmental cooperation at 42 U.S.C. 654(9), the applicable federal regulations, 42 C.F.R. 302.34, require the states to enter into "cooperative arrangements with appropriate courts and law enforcement officials" to enforce support obligations. Thus the Congressional mandate is not for states to engage in disruptive

intergovernmental litigation, but to work cooperatively with the "appropriate courts". Applying this Congressional mandate to this cause, this paternity and child support claim is properly in Tribal court.

> Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians. See, e.g., **Fisher v. District Court**, 424 U.S. 382 (1976): **Williams v. Lee**, 358 U.S. 217 (1959). See also Ex parte Crow Dog. 109 U.S. 556 (1883). [Footnote omitted].

Santa Clara Pueblo v. Martinez, supra.

However, the need for this recitation of authority pales, and one must question Petitioners' sincerity, when we find that McKenzie County entered into a cooperative agreement and contract with the Three Affiliated Tribes to pursue these paternity and child support matters in Tribal Court a full five months prior to having filed this matter in state district court. The undisputed record also shows that McKenzie County was during all times pertinent to this cause, and still is, pursuing one or more matters relative to paternity and support in Tribal Court. The Chairman of the McKenzie County Social Services Board and the Director both signed the agreement.

Petitioners cannot obscure the facts to create an issue by suggesting that the North Dakota Sureme Court somehow misapplied federal law. Petitioners used the federal law to enter into the enforcement agreement with

the Three Affiliated Tribes. Now they are attempting to tell this Court that federal law has been misapplied because the North Dakota Supreme Court agreed that the Tribal Court is indeed the proper forum to determine the all important question of paternity among Tribal members. This is not just an "off-reservation determination of paternity for purposes of enforcement of support" (Petition for Writ, page 11). Paternity actions cannot be classified into an order of diminishing importance. The child in question here, her children, and her children's children will all be affected Tribal members. The Petitioners' cavalier attitude toward a determination of paternity (Petition for Writ, page 11) is precisely why this Court has repeatedly held that Indian Tribes have the sovereign power to determine domestic relations among Tribal members. Even before a paternity determination has been reached herein, Petitioners have accused Respondent of avoiding his responsibility as a parent. Respondent, however, and the North Dakota Supreme Court, have merely demonstrated where a determination of paternity must be reached: in the Tribal Court of the Tribal members herein.

In summary, Petitioners have failed to present any legally cognizable basis upon which this Court could reasonably exercise it **certiorari** authority. The decisions of this Court amply justify a denial of the petition.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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